IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1254 of 2006
WITH
FIRST APPEAL No. 3230/2006
WITH
CIVIL APPLICATION No.5156/2006

For Approval and Signature:
HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO. LTD - Appellant(s)
Versus
CHANDUBHAI SUKHDEVBHAI & 5 - Defendant(s)

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Appearance :
First Appeal No. 1254/2006 & Civil Application No.5156/2006
MS AMEE YAJNIK for Appellant(s) : 1,
RULE NOT RECD BACK for Defendant(s) : 1 - 5.
MR SHALIN N MEHTA with Ms. Viraj Fojdar for Defendant(s) : 6,

First Appeal No. 3230/2006
MS AMRITA AJMERA for Appellant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 31/01/2007

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

These are cross appeals filed by the insurance company and the claimant challenging judgement and award dated 6th January, 2006 passed by the Motor Accident Claims Tribunal(Main), Surendranagar in M.A.C.P. No. 793/1995.

2. First Appeal No.1254/2006 has been filed by United India Insurance Company Limited challenging the apportionment of negligence between the drivers of the two vehicles involved in the accident as well as the quantum of compensation awarded by the Claims Tribunal to the claimant.

3. On the other hand, First Appeal No.3230/2006 has been filed by the original claimant seeking enhancement of the compensation awarded.

4. On 21st October, 1995, the claimant was travelling as a Cleaner in a Mini truck bearing registration no. G.J.13-T-5195. He was sitting in the back portion of the truck with his right arm rested against the wooden side of the Mini truck. When the Mini truck was in motion, another truck bearing registration no. G.J.12-T-9828 came from the opposite direction. Before the Claims Tribunal, it was the case of the claimant that both the vehicles were driven by

the respective drivers rashly, negligently and in high speed. Both the drivers drove their trucks in such negligent and dangerous manner that the vehicles brushed against each other and the side glass of the truck hit the right arm of the claimant with such force that his arm got completely severed from the body. For this bodily injury, the claimant filed the above mentioned claim petition seeking compensation of Rs. 5,00,000/- from the drivers, owners and insurance companies of both the vehicles involved in the accident.

5. It may be noted that the appellant United India Insurance Company Limited was the insurer of the Mini truck bearing registration no. G.J.13-T-5195. Opponent no.6 herein i.e. The New India Assurance Company Ltd. was the insurer of truck bearing registration no. G.J.12-T-9828.

6. Before the Claims Tribunal, the claimant gave his deposition and stated that on the date of accident at about 4:00 O' Clock in the evening when he was travelling from Surendranagar to Viramgam in Mini truck bearing registration no. G.J.13-T-5195 as a Cleaner, the driver was driving the vehicle at a high speed and despite a curve on the road, did not slow down. Similarly, the drier of truck bearing registration no. G.J.12-T-9828 came from the opposite direction, also being driven at a high

speed and rashly. On account of rash and negligent driving by both the drivers, both the vehicles brushed against each other, as a result of which he received serious injuries. In short, it was the case of the claimant before the Tribunal that both the drivers were driving their vehicles at an excessive speed and in rash and negligent manner. He had stated that despite there being a curve on the road, the drivers of both the vehicles did not slow down their respective vehicles. On the basis of this deposition, the Tribunal came to the conclusion that both the drivers were negligent in causing the accident. It may be noted that the drivers of neither of the vehicles entered into the witness box before the Tribunal to give their deposition. The Tribunal observed that when two heavy vehicles approach each other on a curve, it is the duty of the drivers to ensure that there is safe distance maintained between the vehicles concerned. The drivers failed to take such care and thereby were negligent in causing the accident. The Tribunal however, concluded that driver of the Mini truck bearing registration no. G.J.13-T-5195 was responsible to the extent of 70% in causing the accident whereas driver of truck bearing registration no. G.J.12-T-9828 was responsible to the extent of 30% in causing the accident.

7. With respect to quantum of compensation, the

Tribunal found that the claimant was aged 22 years on the date of accident. He was employed as a Cleaner in the Mini truck. Before the Tribunal, Claimant had asserted that his monthly income was Rs. 1500/-. However, since there was no documentary proof in support of his income, the Tribunal believed his monthly salary to be Rs. 1200/-. For the purpose of prospective income, the Tribunal increased the assessed monthly income of the claimant on the date of accident by 50% and adopted a figure of Rs.1800/- per month to be the future income of the claimant for the rest of his working life.

8. With respect to disability, the Tribunal found that the claimant had lost his right arm from 3.5 inches below the shoulder. Medical evidence on record suggested that the claimant had received 80% disability of the upper body. The Tribunal found that the claimant was employed as a Cleaner. Having lost his right arm, his functional disability in terms of loss of earning capacity should be worked out at 80%. The Tribunal turned down the suggestion of original opponents that the claimant had received disability only of 50% of the body as a whole and that therefore, compensation should be worked out on the basis of such percentage of disability.

9. Considering the age of the claimant being 22

years on the date of accident, the Tribunal adopted a multiplier of 15. Loss of future income was thus worked out on the above parameters adopted by the Tribunal.

10. The prospective income of the claimant having been taken at Rs. 1800/- per month and functional disability of earning capacity having been worked out at 80%, the Tribunal found that the claimant would be at a loss of Rs. 1440/- per month towards future income or Rs.17280/- per annum (1440x12). Applying multiplier of 15, the Tribunal worked out the future loss of income at Rs. 2,59,200/-(Rs.1440x12x15).

11. The Tribunal also awarded a sum of Rs. 12,000/- under the head of actual loss of income considering that the claimant had to undergo extensive medical treatment and long lay off. The Tribunal also awarded a sum of Rs. 10,000/- under the head of pain, shock and suffering, Rs.10,000/- under the head of medical expenses and Rs. 6,000/- under the head of special diet, transportation and attendant charges. The Tribunal also granted a sum of Rs. 20,000/- for expenses for fitting artificial limb.

12. In the nutshell, the Tribunal awarded following sums :

1. Rs.2,59,200/- for future loss of income.
2. Rs. 12,000/- for actual loss of income.

3.	Rs. 10,000/-	for pain, shock and suffering.
4.	Rs. 10,000/-	for medical expenditure.
5.	Rs. 6,000/-	for special diet, transportation and attendant charges.
6.	Rs. 20,000/-	for expense of artificial limb
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	Rs.3,17,200/-	total compensation

13. Before us the appellant-United India Insurance Company Limited in its appeal being First Appeal No.1254/2006 has challenged the said award primarily on two counts.

14. It is firstly contended that the Tribunal erred in holding the driver of Mini truck negligent to the extent of 70% in causing the accident. It is contended that if at all, there can be no disproportionate apportionment of negligence between the two drivers. It is contended that there was nothing on record to suggest that the driver of the vehicle insured by the appellant insurance company was in any manner more negligent than the driver of the truck which was involved in the accident. It was next contended that the Tribunal also erred in awarding a total sum of Rs.3,17,200/- to the claimant. It is contended that the award is on the higher side and the compensation awarded deserves to be reduced.

15. On the other hand, the claimant having filed

First Appeal No. 3230/2006 contended before us that the compensation awarded by the Claims Tribunal is inadequate. Learned advocate Ms. Amrita Ajmera submitted that the claimant had lost his right arm. He was employed as a Cleaner. He would therefore, be rendered unfit to discharge his normal duties. The Tribunal therefore, should have accepted 100% functional disability in the present case.

15.1 She contended that the claimant was aged about 22 years on the date of accident. The Tribunal therefore, ought to have adopted a higher multiplier than 15. She submitted that the Tribunal also erred in believing the income of the claimant at Rs.1200/- per month on the date of accident. She also submitted that amount of Rs.10,000/- awarded under the head of pain, shock and suffering is grossly inadequate. In support of her contention, learned Counsel relied on certain decisions of this Court as well as Apex Court, reference to which will be made later at an appropriate stage.

16. Learned advocate Mr. Shalin Mehta appearing for opponent no.6 - the New India Assurance Company Limited, insurer of the truck bearing registration no. G.J.12-T-9828 while supporting the impugned judgement and award on the question of apportionment of negligence between the two drivers submitted that the conclusion in this

regard arrived by the Tribunal calls for no interference.

16.1 On the question of quantum of compensation, however, he opposed the First Appeal No. 3230/2006 filed by the claimant for enhancement of the compensation and contended that no enhancement is called for. He submitted that the Tribunal erred in adopting functional disability of 80% of the body as a whole when the medical evidence suggested that same is no more than 50%. He therefore, submitted that even if this Court were to consider increasing the compensation under the head of pain, shock and suffering, the same would get more than off-set, if the disability is reduced from 80% as adopted by the Tribunal to 50% as suggested.

16.2 Learned Counsel relied on certain decisions of the Apex Court, reference to which will be made later at an appropriate stage.

17. Having heard the learned advocates appearing for the parties, if we first advert to the question of negligence of the drivers of the vehicles involved in the accident, it appears that the claimant in his evidence before the Claims Tribunal had clearly implicated both the drivers for causing the accident. He had stated that both the vehicles were being driven in a rash and negligent manner and at an excessive

speed. He had stated that despite there being a curve on the road, neither of the vehicles were slowed down. Thus, on highway, two heavy vehicles were driven with excessive speed on a curve and in such a manner that the vehicles brushed against each other. Negligence of drivers of both these vehicles is thus writ large on the face of record. It was the duty of both drivers to maintain a safe distance between the two vehicles. Clearly, they failed to do so. From the record therefore, it was established that both the drivers were negligent in causing the accident. In our opinion, there was nothing to choose between the two drivers in the degree of negligence exhibited by them. Even the Tribunal in its impugned judgement has not assigned any reasons for disproportionate apportionment of negligence between the two drivers. If at all, in our opinion, both the drivers were equally negligent in driving their respective vehicles. Without there being anything more on record, the conclusion of the Tribunal that the driver of Mini truck was negligent to the extent of 70% and driver of the truck was negligent to the extent of 30% in causing the accident, cannot be upheld. It was a clear case of equal and composite negligence on part of both the drivers. We therefore, hold that both the drivers were equally negligent in causing the accident. The conclusions of the Tribunal in this respect therefore, are

accordingly modified.

18. It may be noted that though apparently before the Tribunal no contention seems to have been taken by any of the original opponents, before us both the insurance companies, however feebly, sought to suggest that to a limited extent at-least the claimant himself was negligent. We are unable to accept this contention. The claimant had stated that he was sitting in the Mini truck with his arm resting against the wooden body of the Mini truck. At that time the truck from the opposite direction came so precariously close to the Mini truck in which he was sitting, that a small protruding portion of the rear view mirror of the truck hit the right arm of the claimant with such force and ferocity that instantaneously, the arm was severed from the body. We find that under no circumstances, claimant can be held negligent in such a case. As noted earlier, instead of maintaining a safe distance between the two vehicles which were being driven at high speed on highway, both the drivers continued to drive their vehicles at excessive speed even on a curve and thereby brushed against each other and caused serious injuries to the claimant.

18.1 In the result, we conclude that the drivers of both the vehicles were negligent in equal proportion in causing the accident.

19. Coming to the question of awarding compensation, we find that the Tribunal erred in accepting the income of the claimant at Rs.1200/- per month. There is no dispute that the claimant was working as a Cleaner in the Mini truck on the date of accident. His assertion therefore, that he was being paid a monthly salary of Rs. 1500/- was imminently believable. The Tribunal therefore, ought to have worked out compensation on basis of such income of the claimant. With passage of time and with falling purchasing power of money and general increase in salaries, it would not be unreasonable to accept the average income of the claimant at one and half times that much or Rs. 2150/- per month for the rest of his working span.

20. With respect to extent of disability as noted earlier, the Tribunal has adopted a functional disability of 80% though the medical evidence suggested that same was 50% of the body as a whole. The Tribunal followed the disability prescribed for the said injury under the Workmen Compensation Act to arrive at assessment of 80% disability.

20.1 Learned advocates for the insurance companies submitted that the same should be adopted at 50% whereas learned advocate Ms.

Amrita Ajmera for the claimant submitted that having lost his arm, the claimant would be rendered jobless and the disability should be accepted at 100%. In support of her contention, she placed reliance on the decision of Apex Court in the case of Pratap Narian Singh District Education Officer v. Shrinivas Sabata and another reported in AIR 1976 SC 222, wherein the Apex Court considering the case under Workmen Compensation Act, found that the workman was a carpenter. He had received injuries in the course of employment which resulted in amputation of his left hand above the elbow. It was in this background that the Hon'ble Supreme Court was pleased to uphold the view of the Commissioner for Workmen's Compensation that the workman had suffered total disablement.

20.2 Reliance was also placed on the decision of Division Bench of this Court in case of Ramanbhai Darji v. Babusing Thakore reported in 2000(2)GLH (UJ)7, wherein Division Bench relying on the decision of Apex Court in the case of Pratap Narian Singh District Education Officer v. Shrinivas Sabata and another(supra), applied the principle in motor accident case and adopted higher percentage of disability than the one which was medically opined.

20.3 Having perused the judgement under

challenge and rival contentions, we find that the Tribunal was justified in adopting 80% disability in case of the present claimant. It is true that there was medical evidence on record to suggest that the disability was only 50% of the body as a whole, but one cannot lose sight of the fact that the claimant was employed as a Cleaner on a truck. Having lost his one arm, that too his right arm, the claimant had suffered considerable dent in his earning capacity. It was not necessary for the Tribunal to apply the percentage of disability as assessed by the medical expert with rigidity and it was open for the Tribunal to make suitable adjustments and assess loss in earning capacity of the claimant considering his occupation and nature of injury. We are however, of the opinion that no further increase in the percentage of disability is warranted in the present case. The claimant had not brought on record any material to establish that he was rendered completely and totally incapable of finding any employment or doing any work at all. In that view of the matter percentage of disability adopted by the Tribunal calls for no modification.

21. Assessment of future loss of income of the claimant would therefore, be worked out accordingly.

21.1 So far as question of choice of

multiplier is concerned, we find that the Tribunal erred on the conservative side. The claimant was aged 22 years on the date of accident. He has a long life to lead. He was a abled bodied person. He would have to almost entirely fall back on the compensation that he may receive for sustaining himself and his family members, if they are depending on him. Considering the age of the claimant on the date of accident and other relevant circumstances, in our opinion, a multiplier of 17 should be adopted. In the result, computation of future loss of income would be worked out as follows :

21.2 Prospective monthly income of the claimant being Rs.2250/- would come to Rs.27,000/- per annum. Applying multiplier of 17 as held above, his future assessment of income would come to Rs.4,59,000/- (Rs.2250x12x17). Since disability is worked out at 80%, reducing the said sum by 20% i.e. 91,800/-, net compensation under the head of future loss of income would come to Rs.3,67,200/-.

22. With respect to the question of appropriate amount to be awarded under the head of pain, shock and suffering, lengthy arguments were made by all the learned advocates.

22.1 Learned advocate Mr. Shalin Mehta for

respondent no.6 -the New India Assurance Co. ltd. pointed out the decision of Apex Court in the case of Suresh Chandra v. State of U.P. and another reported in (1995) 6 Supreme Court Cases 623, wherein the Hon'ble Supreme Court allowed a compensation of Rs. 1,45,000/- for an injured claimant aged 18 years. We may however, notice that in the said case, the Apex Court only restored the judgement of the Claims Tribunal awarding the said amount which was reduced by High Court to Rs.85,000/-. We may also notice that the case was under Workmen Compensation Act and was rendered in facts of the case.

22.2 Mr. Shalin Mehta also relied on the decision in the case of United India Insurance Co. Ltd v. H.B. Siddappa and another reported in 1994 ACJ 863, wherein for a claimant who had suffered amputation of right arm, High Court had awarded a sum of Rs.39,520/- on all counts other than loss of earning capacity.

22.3 Learned Counsel also placed reliance on the decision in the case of Himachal Road Trans. Corpn. v. Amar Singh reported in 1997 ACJ 181, wherein the High Court for amputation of right arm above elbow while assessing the permanent disability at 75% granted a sum of Rs. 15,000/- under the head of pain, shock and suffering and loss of amenities of life.

22.4 Reliance was also placed on the decision in the case of Jai Bhagwan v. Laxman Singh and others reported in (1994)5 Supreme Court Cases 5, wherein the Apex Court in facts of the case enhanced compensation from Rs. 45,000/- to Rs.80,000/-, wherein a boy aged 22 years had suffered amputation of his left leg above the knee.

22.5 On the other hand, learned Counsel Ms. Amrita Ajmera for the claimant relied on the decision of Hon'ble Supreme Court in the case of R.D. Hattangadi v. Pest Control (India) Pvt. Ltd and others reported in 1995 ACJ 366, wherein the Apex Court was pleased to enhance compensation of pain, shock and suffering and loss of amenities of life from Rs. 1,00,000/- to Rs. 3,00,000/-. It may be noted however, that in the said case injured claimant who was an advocate was rendered paraplegia below the waist. It was not a case of amputation of limb.

22.6 Learned Counsel for the claimant also relied on the decision of Division Bench of this Court in the case of Mahendrakumar Manilal Patel & anr. v. Ramjibhai Dalsibhai Chaudhary & ors. reported in 2006(1)GLR 367 in which the Division Bench awarded a sum of Rs.1,25,000/- for pain, shock and suffering to a claimant who had to undergo amputation of his left leg in addition to having suffered fracture on his left leg.

22.7 At the outset, we may note that amount of Rs. 10,000/- awarded by the Claims Tribunal under the heading of pain, shock and suffering is grossly inadequate. Admittedly, the claimant has suffered a loss of limb. In fact, the right arm of the claimant from 3 inches below the shoulder was severed from the body due to impact of the accident. It has also come on record that claimant had to undergo extensive treatment. There was an attempt to fit an artificial limb in place of his severed arm. Such an attempt however, failed. In addition to having suffered such pain and shock, the claimant would continue to suffer handicap for rest of his life. He would not be in a position to carry out number of activities that a normal person could. He would not be in a position to carry heavy weight. Unfortunately, it has not come on record whether the claimant was married or unmarried. However, in either cases, he would be the sufferer. If married, injury and disablement would reduce his enjoyment of a married life. If unmarried, his prospects of marrying a normal bride would be completely destroyed. Looking from either angle, the claimant would suffer. Considering all these aspects of the matter and considering the age of the claimant on the date of accident, in our opinion, it would be just to award a sum of Rs. 75,000/- to the claimant for pain, shock and suffering and loss of enjoyment

of amenities of life.

23. With respect to award of Rs. 10,000/- for medical expenditure, Rs.20,000/- for artificial limb and Rs. 6,000/- for Special diet, transportation,attendant charges, etc., no debate was made by either side. Directions for payment of these amounts are therefore, left unchanged.

24. The claimants therefore, shall receive following sums :

1. Rs.3,67,200/- for future loss of income.
2. Rs. 75,000/- for pain, shock and suffering and loss of amenities of life.
3. Rs. 20,000/- for artificial limb.
4. Rs. 10,000/- for medical treatment.
5. Rs. 6,000/- for special diet, transportation and attendant charges.

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Rs.4,78,200/- total compensation.

25. In the result, both the appeals are disposed of by giving following directions :

1. First Appeal No. 1254/2006 succeeds to the extent of holding that the drivers of both the vehicles i.e. Mini truck bearing registration no. G.J.13-T-5195 and truck bearing registration no. G.J.12-T-9828 were responsible in equal proportion in causing the accident.

Prayer for reduction in the compensation awarded by the Claims Tribunal made by the

appellant insurance company in this appeal is however, turned down.

2. The First Appeal filed by the original claimant being First Appeal no. 3230/2006 is partially allowed. The amount of compensation awarded by the Claims Tribunal is enhanced to a total of Rs. 4,78,200/-.

3. All the original opponents are held jointly and severally liable to satisfy the modified award.

4. Directions for payment of interest at the rate of 9% from the date of claim petition till actual payment is left undisturbed and shall apply also to the additional amount awarded in these appeals.

5. The amount of Rs. 25,000/- deposited by the appellant insurance company while filing the appeals shall be transmitted to the Tribunal within a period of two months from today.

26. In view of the order passed in First Appeals, Civil Application for stay do not survive, same is accordingly disposed of.

(M.S.Shah,J.)

(Akil Kureshi,J.)

(raghu)